IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.1224 OF 1988

1. Ravindra Govind Kadu,)

2. The Oriental Insurance Co.Ltd) Ratnagiri through Branch) Manager, Ratnagiri.) ...Appellants

Versus

1. Abdul Latif Mohamed Lambe,) since deceased by his heirs) and legal representatives:)

1(a) Bamu Abdul Karim Savant,)

1(b) N.A.Lambe,) Both Adult, R/at Ratnagiri,) Near Udyan Nagar,) Ratnagiri.) ...Respondents

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Mrs A.A.Agarwal for the Appellants.

Shri S.M.Kazi for the Respondents.

CORAM : ABHAY S.OKA, J.

DATED : FEBRUARY 14, 2007.

JUDGMENT:

1. Heard Mrs Agarwal for the Appellants and Shri Kazi for the Respondent Nos.1(a) and 1(b). The Appellants have taken exception to Judgment and Award dated 12th January, 1988 passed by the learned Member of the Motor Accident Claims Tribunal, Ratnagiri. The Appellant No.1 is the owner of the offending scooter involved in the accident. The Appellant No.2 was the

insurer of the scooter on the relevant date. The first Respondent is the original claimant. The first Respondent was proceeding by road from Bazar Peth to his residence at Ratnagiri. When he was proceeding on the road at about 09.30 a.m, the Appellant No.1 came by a scooter from the backside and gave a dash to him. The left leg of the first Respondent got entangled in between the front wheel and the body of the scooter. As the Appellant No.1 did not stop the scooter, the first Respondent was dragged to a certain distance. The first Respondent suffered a fracture and as a result of the injury sustained, his leg was shortened. The learned Member of the Tribunal has awarded compensation of Rs.65,000/- with interest.

2. The learned counsel for the Appellant submitted that there was absolutely no evidence produced by the first Respondent to show that his monthly income was Rs.7,000/- and compensation is awarded on that basis. She, therefore, submitted that the compensation awarded is excessive. The learned counsel for the Respondents supported the impugned Judgment and Award.

3. The evidence of the original claimant discloses

that immediately after accident he was admitted to nursing home of Dr.Palkar at Ratnagiri. Three days thereafter he was shifted to the hospital of Dr. Talwalakar at Bombay where he was indoor patient for three and half months. He has stated that he suffered a fracture and had to spent about Rs.40,000/- on medical treatment. He stated that he was unable to walk properly without support of a stick and without assistance of someone. He deposed that he was getting salary of Rs.7,000/- per month. In examination in chief he has deposed that he was in service with National Marine Service and was working in gulf countries as a driver on a ship. He produced copies of the passport and VISA which were exhibited by the Tribunal.

4. The perusal of the record shows that the first Respondent produced receipts at Exhibit 18 and 21 which show that total amount spent on treatment and medicine is Rs.38,000/-. His claim on that account was Rs.40,000/-. There is no challenge in the cross-examination to the fact that the first Respondent suffered fracture injury and that he was hospitalised for three and half months and more. There is also no challenge to the fact that even on the date on which his

evidence was recorded, he was unable to walk properly. While calculating compensation, there is always some element of guess work. There is some material on record of the Trial court to show that the income of the Respondent was Rs.7,000/- per month. There is evidence to substantiate the claim of Rs.40,000/- on account of expenditure incurred on medical treatment. The learned Member of Tribunal has noted that even before the court the first Respondent was not able to walk properly and that evidence of first Respondent which is unchallenged. If this aspect is considered and even if salary of the first Respondent is taken on the lower side, the compensation of Rs.65,000/- awarded by the Tribunal appears to be just and proper.

5. It must be noted that during the pendency of the Appeal, the original claimant has already expired. No case is made out for interference. Appeal is dismissed. No orders as to costs.

Judge.